



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Twelfth session
26–30 April 2010

**Consideration of reports submitted by States parties under
article 74 of the Convention**

**Concluding observations of the Committee on the Protection of the
Rights of All Migrant Workers and Members of Their Families**

Algeria

1. The Committee considered the initial report of the Algeria (CMW/C/DZA/1) at its 128th and 129th meetings (CMW/C/SR.128 and 129), held on 26 and 27 April 2010, and adopted at its 136th meeting, held on 30 April 2010, the following concluding observations.

A. Introduction

2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent delegation.

3. The Committee recognizes that Algeria is a country of origin, transit and destination for migrant workers.

4. The Committee notes that many of the countries in which Algerian migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee is pleased to note that, according to article 132 of the Constitution, international treaties, including the Convention, take precedence over national law.

6. The Committee welcomes the recent establishment of the Consultative Council of National Community Abroad with the objective of allowing the State party to better take into account concerns of national communities living abroad.

7. The Committee welcomes the suppression of exit visa, as stipulated in Law No. 08-11 of 25 June 2008 concerning the conditions of entry, stay and circulation on migrants in Algeria.

8. The Committee also welcomes the conclusion by the State Party of bilateral and multilateral agreements, at the regional and international level, in so far as they promote sound, equitable and humane conditions of migration.

9. The Committee welcomes the State party's recent adherence to the following instruments:

(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2003.

(b) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography in 2009 and 2006, respectively.

C. Principal subjects of concern, suggestions and recommendations

I. General measures of implementation (arts. 73 and 84)

Legislation and application

10. The Committee notes that Algeria has not yet ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

11. The Committee invites the State party to consider acceding to ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Data collection

12. The Committee regrets the lack of data and statistics on migration flows, including with regard to the population of irregular migrant workers. The Committee recalls that such information is crucial to assessing the situation of migrant workers and developing adequate measures for the implementation of the Convention.

13. The Committee strongly encourages the State party to improve its collection of data on migration, which should be appropriately disaggregated (including by sex, age and origin), with a view to assessing and monitoring the situation of migrant workers in Algeria, including those who are in an irregular situation, and the implementation the rights set out in the Convention.

Training in and dissemination of the Convention

14. While taking note of information provided on efforts to raise awareness of international human rights standards, including in the training of members of the judiciary, the Committee noted the absence of information on more specific measures to ensure that migrant workers are informed about their rights under the Convention.

15. The Committee encourages the State party to:

(a) Strengthen and expand its training programmes to include all officials working in the area of migration, including members of the judiciary and social workers;

(b) **Ensure access by migrant workers to information about their rights under the Convention; and**

(c) **Work with civil society organizations in order to promote and disseminate information on the Convention.**

II. General principles (arts. 7 and 83)

Right to an effective remedy

16 The Committee notes the information provided that the competent organs of the State party have not received any complaints in relation to violations of the rights of migrant workers. However, the Committee is concerned that the lack of cases on record is reflective of the difficulties faced by migrant workers and members of their families, particularly those in an irregular situation, in seeking redress for violations of their human rights.

17. **The Committee urges the State party to ensure that migrant workers and members of their families, including those in an irregular situation, enjoy the same rights as nationals of the State party, in law and in practice, to file complaints about violations of their human rights and have access to redress mechanisms before the courts.**

III. Human rights of all migrant workers and members of their families (arts. 8-35)

18. The Committee is generally concerned about the association of irregular migration with criminality and the use of the term “illegal migrants” rather than migrants in a “non-documented” or an “irregular situation”, which is the terminology used in the Convention. In this regard, the Committee is concerned that a considerable number of migrant workers in the State party are non-documented and that their irregular migration status is considered a criminal offence punishable by imprisonment and/or fines under Law No. 08-11 of 25 June 2008.

19. The Committee is concerned that migrant workers in an irregular situation in the State party do not effectively enjoy a range of the rights guaranteed to all migrant workers under the Convention, including rights relating to conditions of work and terms of employment (art. 25), the right to join trade unions and associations (art. 26), the right to social security (art. 27) and the right to medical care (art. 28).

20. The Committee considers of particular concern the situation of women migrant workers and children of migrant workers in an irregular situation. While taking note of the information provided by the State party that there are no obstacles for the registration of births and access to education for children of migrant workers in an irregular situation, the Committee is concerned that children may not be able to effectively enjoy such basic rights as their parents seek to avoid contact with public authorities from fear of sanctions and expulsion. The Committee is concerned that the lack of data on the situation of irregular migrants, including with regard to school enrolment of their children, may prevent the State party from effectively assess and address the problems faced by them and their families.

21. **The Committee urges the State party to take all necessary measures to ensure that migrant workers and their families are not deprived of any of the rights under the Convention which apply to all migrant workers, including those in an irregular situation. In particular, the Committee urges the State party to bring its legislation – which criminalizes irregular migration – into conformity with the Convention.**

22. While noting the information provided by the State party that Law No. 08-11 provides for a right of appeal in the case of expulsion of an irregular migrant worker, the

Committee is concerned that in the same law the right to appeal is not guaranteed in cases where expulsion orders are issued by *walis* (governors). Moreover, while noting the assurances of the State party delegation that adequate safeguards are in place against collective expulsions of migrant workers, the Committee regrets that the State party did not provide any response regarding reports alleging several cases of collective expulsion of sub-Saharan migrants.

23. **The Committee recommends that the State party takes the necessary measures to establish a legal framework which regulates expulsion/deportation procedures in accordance with articles 22 and 23 of the Convention; in particular, the person concerned shall have the right to submit the reasons why he or she should not be expelled and to have his or her case reviewed by a competent authority. The Committee also recommends that the State party ensures the enjoyment of rights arising out of post-employment, especially relating to the settlement of claims for wages and other entitlements, and that migrant workers who are expelled have sufficient time to file complaints in this regard. Furthermore, the Committee recommends that the State party investigate the alleged cases of collective expulsion of sub-Saharan migrants, prosecute those responsible and take effective measures to provide redress to the victims and to avoid such expulsions in the future.**

24. The Committee takes note of information in relation to article 42 of the 2010 Finance Law adopted by the State party which allows for the definitive expropriation of abandoned property. While noting the explanation of the State party's delegation that this provision does not apply to expelled migrant workers and the delegation's views with regard to the non-retroactivity of the Convention, the Committee is concerned that the application of this provision could result in the expropriation of the legitimate property of expelled migrant workers, including the Moroccan migrant workers expelled from the State party in the past.

25. **The Committee recommends that the State party take all necessary measures to reconstitute the legitimate property of expelled migrant workers, including the Moroccan migrant workers expelled in the past, or to provide them with fair and adequate compensation in conformity with article 15 of the Convention.**

26. The Committee is concerned that irregular migrant workers awaiting deportation may be deprived of their liberty for prolonged periods and that detention orders may, in principle, be extended indefinitely.

27. **The Committee recommends that the State party take steps to ensure that the detention of migrant workers in an irregular situation is only a measure of last resort and that, in all circumstances, such detention is carried out in conformity with articles 16 and 17 of the Convention.**

IV. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

28. While noting the information provided by the State party that migrant workers in a regular situation are able to form their own associations, the Committee is concerned that the law governing the right to form trade unions is not in conformity with article 40 of the Convention in that it excludes migrant workers from the right to form trade unions. Moreover, while noting that migrant workers in a regular situation are able to join trade unions, the Committee is concerned that, in practice, there has been no known case of any involvement by a migrant worker in trade union activities in Algeria.

29. **The Committee recommends the State party to amend its legislation governing the right to form trade unions and to ensure in practice the right of migrant workers**

in a regular situation to form trade unions, in conformity with article 40 of the Convention.

30. The Committee is concerned that migrant workers cannot benefit from social housing, which is reserved for Algerian nationals.

31. The Committee encourages the State party to ensure that regular migrant workers enjoy equality of treatment with nationals of the State of employment in particular in relation to access to housing, including social housing schemes, in conformity with article 43, paragraph 1 (d).

32. The Committee is concerned that the regulations governing family reunification for migrant workers, under Act No. 81-10, apply only to the spouse.

33. The Committee recommends that the State party ensures that the rules governing family reunification are in line with articles 4 and 44 of the Convention.

34. The Committee has received information that several former Moroccan migrant workers continues to be separated from their families following their collective expulsion in the past.

35. The Committee recommends that the State party takes appropriate measures to facilitate the reunification of those Moroccan migrant workers with their families who remained in Algeria.

V. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

36. While noting that a range of State institutions deal with the issue of migration, including the National Employment Agency, the labour inspectorate and the *wilaya* employment offices, the Committee regrets the lack of sufficient information on the coordination and effective interaction of those bodies.

37. The Committee recommends that the State party continue its efforts to coordinate its entities working on migration issues in order to ensure their effectiveness.

38. The Committee is concerned that the legislation that criminalizes trafficking in persons for the purposes of labour and sexual exploitation does not explicitly provide for protection of victims of trafficking. Moreover, it notes the lack of specific support services available for such victims.

39. The Committee urges the State party to ensure that legislation and measures to prevent and eliminate trafficking provide for adequate protection of and assistance to victims of trafficking. In particular, in line with the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), the State party should ensure that:

(a) Trafficked persons are given access to primary health care and counselling; that safe and adequate shelter that meets the needs of trafficked persons is made available;

(b) Trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality;

(c) Legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being; and

(d) Trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims.

40. The Committee is concerned that a new law on amendments to the Criminal Code criminalizes attempts of to emigrating in an irregular manner.

41. The Committee recommends that the State party reconsider the proposal that criminalizes the attempt of prospective migrants to leave the national territory in an irregular manner and to ensure that the new law is in conformity with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

VI. Follow-up and dissemination

Follow-up

42. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and legislature, as well as administrative and other relevant authorities.

43. The Committee regrets the limited involvement of non-governmental organizations (NGOs) and other civil society organizations in the preparation of the present report and encourages the State party to take all the necessary measures to ensure the involvement of civil society organizations in the implementation of the Convention and the preparation of the State party's second periodic report.

Dissemination

44. The Committee likewise requests that the State party disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to take steps to make them known to Algerian migrant workers abroad and foreign migrant workers residing or in transit in Algeria.

VIII. Next periodic report

45. The Committee invites the State party to submit its common core document in accordance with the 2006 harmonized guidelines for the preparation of a common core document (HRI/MC/2006/3 and HRI/MC/2006/3/Corr.1).

46. The Committee notes that the State party's second periodic report is due on 1 August 2011. In the circumstances, the Committee requests that the State party submit its second periodic report not later than 1 May 2012.